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The Legal News.

VOL. IX. JANUARY 16, 1886. No. 3.

The appeal list at Montreal has crept up steadily until the January Term opened with 105 cases inscribed, an increase of 21 since the corresponding date of last year. The reduction effected by the extraordinary terms held two or three years ago has disappeared, and the list is now as full as it was in 1883. A roll of 105 cases, at the present rate of progress, means about a year's delay to every case from the Montreal Division passing through this Court.

A Legal Reform Committee, consisting of twenty-two members of the Incorporated Law Society for Ireland, has reported, with only three dissentients, that it is undesirable to amalgamate the professions of barrister and solicitor. The report, however, favours the enactment of a regulation giving an absolute right on the part of each member of both professions of not less than five years' standing, to an immediate transfer from one profession to another, the applicant to pass an examination showing adequate knowledge.

In the course of their investigation of the subject, the Committee obtained some interesting information from various countries. In Victoria the professions are distinct, but in the county courts barristers may practise as attorneys. In Queensland an Act was passed, in 1881, abolishing the distinction between barristers and solicitors, and amalgamating the two professions. In South Australia there is no distinction, while in New South Wales the professions remain distinct. In Bavaria the professions are united, but each lawyer is attached to a certain court or set of courts. So, if a is case is taken to appeal, it passes into the hands of another lawyer. In Denmark also the professions are united. The same is the case in Germany and in Holland. In Portugal the title of solicitor is unknown, and any lawyer can conduct a case in all its stages. In Spain the two branches are united, and the same person can practise at the same time as barrister and solicitor. In Sweden the legal system is very peculiar. There is no bar, nor any body of trained lawyers. Any one can plead his case before the courts in person, or he may employ anybody else he pleases to plead for him. Among those who appear in court as lawyers are literary men, non-commissioned officers, and even artisans and farmers. The judges are appointed from persons who have passed law examinations at the university. The fees paid by the client to the person he employs depend entirely on mutual agreement.

INACCESSIBLE LAW.

It is a singular fact that while it has been a rule of the common law from time immemorial that "every one is bound to know the law," no means were taken for a long time in England to make the knowledge of the law accessible to the people. Quite the contrary, indeed, for not only were reports composed in a court language substantially obsolete, that is the Norman French, but the reporters resorted to technical abbreviations, making them difficult to be deciphered, and really open only to the legal profession of that day, who were specially familiar with the language. And yet the so-called Year Books, coming well down towards the close of the reign of Henry VIII. (A.D. 1536), are replete with legal information, and highly worthy of the attention of all students of law from a historical point of view, as well as greatly useful to inquirers into topics of English constitutional history. It is only of late years that the English government has shown an interest in making these legal antiquities accessible to the public. The distinguished judicial officer called the Master of the Rolls, on January 26, 1857, submitted to the government a proposal for the publication of materials for the history of England from the invasion of the Romans until the reign of Henry VIII. This proposal was adopted, and the publication is now going on.

The Year Books of some of the earlier years have already been translated and published in an accessible and readable form. The great early law writer, Bracton, can also be read to advantage in English, owing to

the painstaking care of the editor, Mr. Twiss, who has wisely published also the original Latin text. This can be usefully read in connection with the Year Books. It will be a long time before the later Year Books will be reached at the present rate of progress.

There are some interesting facts concerning these volumes independently of their legal value. They are written in a language at the time of their composition dead. New words must be incorporated bodily from the English or Latin. Thus it is a medley of French, English and Latin. Occasionally there will stare out from a wilderness of black letter French, a plain English proverb or well rounded English sentence. Towards the latter period of the employment of Norman French, the French and English words were sometimes nearly evenly balanced. I submit a curious specimen of English-French, or French-English, it is difficult to say which, interlarded with Latin, said to be written by Chief Justice Treby in the margin of Dyer's reports (p. 188, b). It also illustrates the savage judicial customs of the time. What the Chief Justice wished to say was that "Chief Justice Richardson, of the Court of Common Pleas at the Assizes at Salisbury in the summer of 1631, was assaulted by a prisoner there condemned for felony, who, after his condemnation, threw a brickbat at the said Justice, which narrowly missed him. And for this act an indictment was drawn immediately by Noy (Attorney General) against the prisoner, whose right hand was amputated and fixed to a gibbet, upon which he himself was immediately hung *in the presence of the Court.*" What he in fact wrote was this:—"Richardson C. J. de C. B. at Assizes at Salisbury in summer 1631, fuit assault per prisoner la condamne fur Felony—que puis son condemnation ject un Brickbat a le dit justice, que narrowly mist. Et per ceo immediately fuit Indictment drawn pur Noy envers le prisoner et son dexter manus ampute et fixe al Gibbet, sur que lay mesme immediatement hange in presence de court." Such was law French in its last stage of decomposition. In the early time it was much purer. (The fact is that when the brickbat approached Judge Richardson he *ducked*, so that he lost only his hat. He being an inveterate joker called out, "You see, now, if I had been an *upright* judge I had been slain." And thus it happened that the ruin of the judge's hat was balanced by the loss of the prisoner's life. But then, prisoners were of no account in those days.)—Theodore W. Dwight, in *Columbia Jurist.*

COUR SUPÉRIEURE.

Joliette, 1885.

Coram Cimon, J.

La Banque Jacques-Cartier v. Leprohon.

Action pour rendre jugement exécutoire—C. P. C. art. 546.—*Défaut de juridiction.—C. P. C. art.* 114.

Jugé:—1o. *Que l'action pour faire déclarer un jugement exécutoire est de la compétence exclusive du tribunal du district où se trouve le jugement originaire;*

2o. *Que si telle action est prise devant le tribunal d'un autre district, celui-ci se déclarera incompétent.*

Cimon, J. Le 20 novembre 1862, la demanderesse a obtenu devant la Cour Supérieure siégeant à Montréal, district de Montréal, un jugement contre P. C. Léodel pour $302, avec intérêt et les dépens. Celui-ci est décédé, et la demanderesse assigne le présent défendeur devant la Cour Supérieure siégeant à Joliette, district de Joliette, alléguant qu'il est le légataire universel du dit P. C. Léodel, et elle demande à ce que la présente Cour Supérieure siégeant à Joliette déclare que le jugement prononcé par la Cour Supérieure siégeant à Montréal le 20 novembre 1862 soit exécutoire contre le présent défendeur.

Celui-ci a comparu, mais n'a pas plaidé.

Evidemment cette cour siégeant à Joliette n'a pas juridiction pour accorder les conclusions de la demanderesse. Cette action doit être prise devant le tribunal, à Montréal, qui a rendu le premier jugement; c'est là, à Montréal, où se trouvent ce jugement et le dossier originaire. L'art. 546 du Code de Procédure s'exprime ainsi: "..... Si elle (la partie) change d'état ou décède avant l'exécution, le jugement ne peut être exécuté contre elle, ou contre ceux qui la représentent, à moins qu'il n'intervienne un autre jugement qui déclare le premier exécutoire contre elle, ou contre ses représentants ou ayans cause."

Ainsi, ce n'est pas le second jugement qui s'exécute, mais c'est le premier jugement qui sera exécuté une fois que la cour l'aura par le second déclaré exécutoire. Il faut donc que ce second jugement soit rendu par le tribunal à Montréal comme incident dans la première cause. L'incident suit le principal. Supposons que la cour, à Joliette, maintienne la présente action, alors le jugement à être rendu serait: "déclarons le premier jugement exécutoire contre le défendeur." L'action ne conclut pas à plus. Ça ne serait donc pas un jugement dont l'exécution pourrait émaner de Joliette; il faudrait que le bref d'exécution vienne de Montréal, puisque le jugement à exécuter est là. Cela démontre que le tribunal à Joliette n'a pas de juridiction. L'art. 114 du C. Proc. fait un devoir au tribunal, quand bien même l'objection n'est pas prise, de renvoyer la demande, si elle est manifestement hors de sa compétence.

Action déboutée.

J. Martel, avocat de la demanderesse.
C. P. Charland, avocat du défendeur.

COUR SUPÉRIEURE.

JOLIETTE, 15 janvier 1884.

Coram CIMON, J.

CHARRON dit DUCHARME v. RONDEAU.

C. P. C., arts. 436, 437—*Procureur annonçant changement d'état de sa partie.*

JUGÉ:—*Que le procureur qui annonce le changement d'état de sa partie, n'est pas tenu d'en produire la preuve, mais seulement de signifier à l'autre un avis de ce changement.*

CIMON, J. La demanderesse a, depuis l'instance, contracté mariage. Mtre. Charland, son procureur, a fait signifier un avis, sous sa signature, au défendeur, lui annonçant ce changement d'état de sa partie et lui donnant le nom de son mari. Le défendeur dit que cet avis n'est pas suffisant pour suspendre l'instance, vu que l'extrait de mariage et le contrat de mariage ne sont pas produits. Cette prétention n'est pas fondée. Les arts. 436 et 437 du C. Proc. n'exigent pas autre chose que l'avis donné par Mtre. Charland. Cette obligation de donner cet avis n'est pas imposée à la partie, mais au procureur. Cet avis est donné par l'avocat sous sa responsabilité personnelle. "Le procureur, dit l'art. "436, *qui connaît* le décès ou changement d'é-"tat de sa partie.... *est* TENU *de le signifier à* "*l'autre....*" Le mandat *ad litem* de procureur, par ce changement d'état, se trouve éteint (C. C. art. 1755 § 4). L'instance, par cet avis, se trouve suspendu. Dalloz, répert., obs., *reprise d'instance*, No. 41, dit: "La signi-"fication de l'acte de décès n'est pas obliga-"toire. L'obligation de se procurer cet acte "pourrait occasionner parfois des retards ex-"trêmement préjudiciables, et, d'ailleurs, la "loi n'exige que la *notification* de la mort, et "il n'y a pas de motifs pour aggraver la for-"malité qu'elle prescrit." 3 Carré et Chauveau, p. 228, § 1280 (bis), ajoutent: "La "simple déclaration de l'avoué doit donc suf-"fire, *sauf l'action en dommages intérêts contre "celui-ci, si elle se trouve fausse*, ainsi que l'en-"seigne M. Pigeau, tome 1, p. 607."

Vide Pothier, proc., p. 80; 1 Pigeau, proced. du Chatelet, p. 344; ord. de 1667, tit. 26, arts. 3 et 4.

Instance déclarée suspendue.

C. P. Charland, avocat de la demanderesse.
Godin & Dugas, avocats du défendeur.

COUR DE CIRCUIT.

STE-JULIENNE, octobre 1884.

Coram CIMON, J.

WESTOVER v. BROPHY.

Prescription des délits—C. C., art. 2261 § 2.

JUGÉ:—*Que l'action en revendication du bois, ou en réclamation de la valeur du bois, coupé illégalement par le défendeur sur la terre du demandeur, et enlevé par le défendeur, ne se prescrit par deux ans, mais la réparation seule du délit se prescrit par ce laps de temps.*

CIMON, J. Le demandeur réclame un certain montant pour du bois que le défendeur aurait illégalement coupé sur son terrain et qu'il aurait ensuite enlevé. Le défendeur dit: "Ce bois a été coupé et enlevé plus de "deux ans avant l'action, et c'est un délit "que j'ai commis, et la § 2 de l'art. 2261 du

" C. C. dit que l'action *pour dommages résultant* " *de délits et quasi délits* se prescrit par deux " ans; en conséquence la présente action est " prescrite."

Naturellement l'article du Code est exprès. L'action pour dommages résultant de délits se prescrit par deux ans; c'est-à-dire, c'est l'action en réparation du délit qui se prescrit par deux ans. Mais lorsqu'un individu m'enlève illégalement un objet, ou bien, comme dans le cas actuel, vient sur ma terre et illégalement coupe mon bois et l'enlève, est-ce que mon action en revendication contre lui de cet objet ou de ce bois, ou mon action pour réclamer de lui la valeur de mon objet ou de mon bois, sera prescrite par deux ans? Evidemment non, car je ne réclame pas là un dommage résultant du délit, mais je réclame ma chose. C'est ce que la Cour d'appel a décidé en différentes circonstances, entre autres, dans la cause *Robert et La cité de Montréal* (2 Dorion, p. 68). Dans cette cause, le juge-en-chef Dorion s'est exprimé comme suit: " Il " faut donc dire que l'art. 2261 ne s'applique " pas à cette cause, et que chaque fois qu'une " partie réclame le prix ou la valeur de sa " chose, soit directement, ou à titre de dom- " mage ou d'indemnité de celui qui, sans droit " et même en commettant un délit, en aura " obtenu la possession, on ne pourra lui op- " poser la prescription de deux ans établie " par cet article."

Vide 24 L. C. J. 96, *Lalonde et al. & Bélanger.*

9 R. L. 57, *Vandal & Aussant.*

4 Aubry & Rau, p. 752.

5 LaRombière, sous arts. 1382 et 1383 C. N. Nos. 49 et 51.

1 Sourdat, resp., Nos. 375 et suivants, 379 et suivants.

Dalloz, repert., vbo., prescription criminelle, Nos. 100 et 200.

Si le défendeur n'a fait que couper le bois et l'a laissé là, c'est-à-dire, ne l'a pas enlevé; alors ce n'est qu'un dommage qu'il a causé par son délit, et l'action pour ce dommage est prescrit par deux ans. Mais l'action pour la valeur du bois qu'il a coupé, s'il l'a enlevé, n'est pas prescrite par deux ans.

Le demandeur ne pourrait réclamer que la valeur du bois enlevé; les dommages qui résulteraient des détériorations commises sur le terrain et de la diminution de valeur du terrain par la destruction de la forêt sont directement dommages du délit, et l'action en réparation de ces dommages est prescrite par deux ans.

A. Archambault, avocat du demandeur.
E. Truesdell, avocat du défendeur.

COUR DE CIRCUIT.

L'ASSOMPTION, 25 septembre 1883.

Coram CIMON, J.

THÉRIEN v. LA CORPORATION DE ST-HENRI DE MASCOUCHE *et al.*

Requête en cassation d'un règlement municipal —Code municipal, art. 698.

JUGÉ:—1o. *Qu'il n'y a que celui qui est électeur municipal qui a droit de demander par la voie de la requête mentionnée en l'art.* 698 *la cassation d'un règlement municipal pour cause d'illégalités;*

2o. *Que le requérant doit alléguer dans sa requête qu'il est tel électeur.*

Voici le jugement:

" La Cour, etc....

" Considérant que la présente requête est prise en vertu des arts. 698 à 708 du Code Municipal;

" Considérant que le dit art. 698 ne donne pas droit de procéder par voie de telle requête qu'*à tout électeur municipal;* que la voie de telle requête est une *procédure spéciale, extraordinaire, et privilégiée,* et qu'on ne peut étendre le droit de s'en servir à d'autre classe de personne que celle spécialement mentionnée dans le dit article;

" Considérant que le requérant n'allègue pas et ne démontre pas dans sa requête qu'il est *un électeur municipal,* et que, en conséquence, il n'a pas fait voir qu'il a droit de procéder en vertu du dit art. 698, et que la dite requête n'est pas fondée en droit;

" Renvoie la dite requête avec dépens."

Corbeil, avocat du requérant.
Jeannotte, avocat des défendeurs.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, December, 1885.

Coram LORD MONKSWELL, LORD HOBHOUSE, SIR BARNES PEACOCK and SIR RICHARD COUCH.

THE COLONIAL BANK V. THE EXCHANGE BANK OF YARMOUTH, NOVA SCOTIA.

Money paid by Mistake—Privity of Contract.

This was an appeal from an order of the Supreme Court of Nova Scotia of the 31st of March, 1884, made in an action in which the Colonial Bank were the plaintiffs and the Exchange Bank, of Yarmouth, were the defendants, setting aside a verdict which had been entered therein for the plaintiffs, with costs, and ordering a new trial.

Mr. Arthur Cohen, Q.C., and Mr. R. G. Arbuthnot were counsel for the appellants; Mr. Grantham, Q.C., and Mr. Bray for the respondents.

The action was brought in October, 1879, to recover a sum of $3000 which the appellants alleged had been paid by mistake to the respondents. On the 21st of April, 1879, Messrs. B. Rogers & Son, merchants, of Yarmouth, Nova Scotia, having consigned a cargo of fish to Antigua by a vessel called the Pronto, sent a telegram to their agents there, Messrs. McDonald & Co., in these words: "When Pronto arrives, cable funds Bank British North America, Halifax." On the ship's arrival, Messrs. McDonald, through a clerk, made an application to the Colonial Bank of Antigua for a cable draft on New York for $3,000 in favor of the Bank of British North America (without specifying the Halifax branch) to the credit of Rogers, Yarmouth. The Colonial Bank, who received the money from Messrs. McDonald & Co., telegraphed to their agents in New York to pay the amount to the Bank of British North America to the credit of Messrs. Rogers & Son, Yarmouth, but the agents, finding that the Bank of British North America had no branch or agency at Yarmouth, consented that the money should be sent to the Exchange Bank at Yarmouth, and it was so sent in mistake. If it had been left in the bank at New York, the Halifax branch could have drawn it. In consequence, however, of the mistake, it went into the hands of the Exchange Bank, which happened then to hold an overdue obligation of Messrs. Rogers & Son, to meet which they applied it, informing Messrs. Rogers that they had done so. The latter objected, and the Bank of British North America subsequently informed the Exchange Bank that the $3,000 intended for their branch at Halifax had been sent to them by mistake, and requested payment to be stopped. The Exchange Bank replied that the money had been applied to the credit of Messrs. Rogers & Son, and they could not recall it. The present proceedings were then instituted by the Colonial Bank against the Exchange Bank to recover the money so paid in mistake. The trial took place before a judge without a jury, when, by consent, the verdict passed for the appellants for $3,000 and interest, with leave to the respondents to move the court. A rule *nisi* was accordingly granted to set aside the verdict and for a new trial, but, on argument before a division of the Supreme Court, it was discharged with costs on the 23rd December, 1882, by a majority of two judges to one. The respondents had the rule re-argued before the full court *in banc*, on the 31st of March, 1884, when the Court, by a majority of three judges to one, set aside the verdict and ordered a new trial. From that decision the present appeal was instituted.

For the appellants it was argued that the Exchange Bank were not justified in retaining the money without advice from or the consent of the Colonial Bank, and that they had notice of such facts as disentitled them to retain it. The money was intended to be sent to the Halifax branch of the Bank of British North America to meet two bills discounted by the appellants, and the respondents were bound to refund money paid to them by accident or mistake.

For the respondents it was contended that the money paid to the respondents was not the money of the Colonial Bank, but was paid to them by an agent of Messrs. Rogers & Son, to be transmitted to that firm. The appellants therefore ceased to be responsible to Rogers & Son after they had transmitted the money. The respondents, as Rogers' bankers, had a right to deal with the money as they

did. As between the appellants and respondents there had been no mistake whatever, and there was no privity between them. The respondents had, in fact, paid away the money and altered their position before they were informed of the alleged mistake.

Their Lordships, in the end, upheld the original verdict in favor of the appellants. They reversed, with costs, the judgment of the Supreme Court of the 31st of March, 1884, by which that verdict was set aside, and they affirmed the decision of the Divisional court of the 23rd December, 1882, refusing to disturb the verdict or to grant a new trial. The verdict originally passed for the appellants for the amount claimed, with interest, must stand, and the respondents must pay the costs.

THE FAMILY RELATIONS IN FRANCE —PARENT AND CHILD.

Whether the unity and closeness of the family relations in France are the cause or the effect of the laws regulating and governing them is difficult to determine, but it is an uncontestable fact that the reciprocal relations of parent and child are legally, and in reality, far more intimate than with us. The provisions of the Code consecrating the closeness of this relationship are less than many others the succinct expression of the usages and customs, or common law of France during the preceding centuries, for prior to the Revolution of 1789, great liberty was allowed to parents in the disposal of their property, and primogeniture prevailed to a great extent. Children were then as now, under the tuition and control of their parents in all important matters such as marriage, until long after their majority, but the control was less efficacious and less frequently exercised than at present.

The advent of the Revolution with its specious doctrines of universal equality, and the compilation of the Code, alike a tribute to the revolutionary elements of the populace, and a consolidation and centralization of power in the government, effected changes in the family relationship, liberal in appearance, but rigorous in fact. Children were placed upon a footing of equality with each other, and all discrimination as to the disposal of the family property amongst the children, formerly vesting in the parents, was abolished, but the Code, while making no distinction between the children, took away from the parents the right of disposing of their property, or more strictly, a large percentage of it. This most arbitrary law is, in its general tenor, known, but as it is of great importance and interest, I append a translation of it. Code Civil, §§ 913, 914.

"Donations, whether as gifts *inter vivos* or as testamentary dispositions, cannot exceed *half* of the property of the donor (or testator) if he leaves at his death one legitimate child; one-third if he leaves two; one-quarter if three or more. The word 'children' in the preceding article comprises descendants of whatsoever degree; however, these take *per stirpes*, and not *per capita*."

The following article lays down the reciprocal law regulating the disposal of property by children who have parents. § 915. "Donations, whether as gifts *inter vivos* or as testamentary dispositions, cannot exceed one-half of the property if in default of children the deceased leaves one or more ancestors ('ascendants') in each of the branches, paternal and maternal; three-quarters if there only exist ancestors of one branch."

It is difficult for us, with our Anglo-Saxon ideas of liberty and independence, to criticise with any degree of impartiality, a law which tyrannically prevents an individual from disposing of property which he owes only to himself, and which he has acquired by his labor or skill; but it is certain that it possesses many most obvious advantages, and that it is far more adapted to a country where inherited wealth is the rule and not the exception, and whose people, emotional and passionate by nature, might otherwise in a moment of irritation or bitterness do irreparable wrong to their offspring.

Another law, less generally known, shows in an equally marked degree the ironclad manner in which the Code cements the family ties. By virtue of article 380 of the Penal Code, husband and wife, parents and children (read also grandchildren), are exempted from criminal process in cases of theft amongst themselves. This law, serving as a complement to that above referred to,

still further consecrates the principles underlying these provisions of the Code, *i.e.*, that the property of the parents is the property of the children, and *vice versa*.

These principles are so ingrafted in the minds of French people that parents of all classes of society, from the humble workman to the financial magnate or nobleman, regard the property which they have acquired by industry, thrift or inheritance, as a trust, and consider it their solemn duty to transmit it to their descendants intact in any case, augmented if possible. The scale of living is reduced, in consequence, to the lowest degree consistent with the position occupied in society, and often verging upon privation, so that the children may have a portion of their inheritance upon marriage, or when starting upon their career in life, and as large a share as possible upon the death of their parents.

Aside from the material and pecuniary rights and duties of parents and children, the Code lays down, very categorically, the moral obligations, something in the manner of the *commandments*. Indeed, article 371 of the Code reads like the commencement of the fifth commandment, "children of all ages owe honor and respect to their father and mother."

The following articles exemplify this. Article 372: "They remain subject to their (the parents') authority until majority or emancipation."

Article 374: "Children shall not leave the paternal home without permission of the father, except for the purposes of voluntary enlistment after the age of eighteen years."

Article 375: "The father who may have serious grounds of complaint on account of the conduct of a child, may adopt the following methods of correction."

Article 376: "If the child is less than sixteen years of age, the father may have him imprisoned during a period not to exceed one month; for this purpose the president of the tribunal of the district shall, upon his request, deliver an order of arrest." If the child be over sixteen years of age, the imprisonment may last six months, at the option of the presiding judge of the court and the district attorney. In neither case is any written instrument (except of course, the order of arrest) or judicial formality necessary.

Thus if parents may not disinherit their children, and if theft in a family does not exist, parents are nevertheless endowed by the Code with a Draconian authority over their offspring, which is, at least, an equally efficient check to the power of disinheriting them.

And the power and authority of parents over their children does not cease at majority in the important events of life, such as marriage.

Article 148 *et seq.* of the *Code Civil*, prescribe that marriage shall not take place without the consent of the parents, unless the son shall have attained the age of twenty-five years and the daughter that of twenty-one, although the age at which marriage is lawful in France is fixed at eighteen for the man and fifteen for the woman. And even if the son has attained the age of twenty-five years and the daughter twenty-one, marriage can only be contracted after the service of three "*actes respectueux*" or "respectful requests" upon the parents, and at intervals of one month. This law applies until the man shall have attained the age of thirty and the woman twenty-five, when the service of one "respectful request" suffices.

These restrictions, severe enough, are rendered still more so by the fact that it is considered highly improper to serve these "*actes respectueux*," and a marriage contracted by virtue of this formality would almost ostracize the couple socially.

It is impossible to give in so short a notice as this, more than a brief summary of the relations of parent and child, but I think sufficient has been said to show the vast differences which separate our social organization, in this particular at least, from that of France.—W. M. GRINNELL in *Albany Law Journal*.

COHABITATION.

The decision of the Supreme Court of the United States in the Utah cases, turning on the meaning of the words "unlawful cohabitation," suggests, if it does not decide, a question which has perplexed many an

attorney in reference to condonation as a bar in divorce.

The rule of law is familiar, that continued cohabitation, after the discovery of marital infidelity, amounts to a condonation or pardon of the offence. But there is considerable difference of opinion as to whether this rule is applicable upon evidence of continued residence together as man and wife without marital intercourse.

Dr. Lushington seems to use the term "cohabitation" for actual connection; as, for instance, where he says that "when a husband has received information respecting his wife's guilt, and can place such reliance on the truth of it as to act upon it, although he is not bound to remove his wife out his house, he ought to cease marital cohabitation with her." And a cohabitation is often spoken of as being voluntary or otherwise on the part of the wife, implying that it is more than co-residence.

We presume the general impression of the profession, and the theory upon which issues of condonation are usually tried, is that actual marital intercourse is essential, but that it may be presumed, and in some cases will conclusively be presumed from continued residence together: while, on the other hand, being at home under the same roof is not in itself cohabitation in the sense that as matter of law it amounts to condonation.

Mr. Bishop (Marriage and Divorce, vol. I, sec. 777, note) appears to hold that the only proper meaning is residence together. He says that he is not aware that other judges than Chancellor Walworth have used the word in any closer sense. In this he does not speak with his usual exactitude. The word is continually used as clearly in the one sense as in the other, and if we are not mistaken his own pages show instances of this. The question to which we advert is, which of the senses is the proper one to give to the term in the rule that cohabitation is condonation.—*N. Y. Daily Register.*

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Jan. 9.

Judicial Abandonments.

Charles Labounta, Sherbrooke, Dec. 26.

Anselme Plamondon, trader, St. Marcel, district of Richelieu, Dec. 29.

Gagnon & Dion, grocers, Quebec, Dec. 26.

Jean Edem Trottier and Jean Irénée Trottier (J. E. Trottier & Fils), manufacturers, Three Rivers, Jan. 4.

Curators Appointed.

Charles W. Mayotte.—Kent & Turcotte, Montreal, joint curator, Dec. 31.

George Venner.—Kent & Turcotte, Montreal, joint curator, Dec. 23.

Joseph C. Beauvais.—Kent & Turcotte, Montreal, joint curator, Jan. 4.

Courteau Frères.—C. Desmarteau, Montreal, curator, Dec. 26.

Zephyre E. Martin.—F. P. Benjamin, merchant, Montreal, curator, Dec. 24.

Michael Hayes, township of Sheen, county of Pontiac.—W. Alexander Caldwell, Montreal, curator, Jan. 2.

Thomas A. Armstrong.—Kent & Turcotte, Montreal, joint curator, Jan. 2.

Sale in Insolvency.

In re The Beaver Lumber Co.—Sale of immoveables, in parish of Yamachiche, at 2 p.m., Jan. 28.

Separation as to Property.

Dame Charlotte Craven against Alfred Benn, agent Montreal.

Expropriation.

Dame Délima Lavigne, widow of Zotique Hudon *dit* Beaulieu, Montreal. Notice of deposit of $3,843.60. Creditors to file oppositions within one month.

GENERAL NOTES.

The number of stamps sold at the Montreal Court House during the year 1885 was 137,558, and the value was $112,601.50.

In *The Seraglio*, 54 Law J. Rep. P. D. & A. 76, it was held a contempt for the owners of a ship to disregard an arrest made by telegraph.

The London *Law Times* says that fees of 100 guineas a day were paid to each of the two leading counsel for the defendants in the Armstrong case.

The Supreme Court of Oregon has held that it is error to keep a prisoner in fetters during the trial, *State* v. *Smith*, 8 Pac. Rep., 343, citing *People* v. *Harrington*, 42 Cal., 165 and *State* v. *Kring*, 1 Mo. App., 438; s. c. 64 Mo, 591.

A curious anecdote connected with the birth of the Prince of Wales has been republished lately. It has, it appears, been the custom for the officer on guard at St. James' Palace to be promoted to the rank of major when a royal child is born. On the day the Prince of Wales came into the world the guard was relieved at 10.45 a.m. Three minutes later the Prince was born. The question arose which officer was entitled to promotion. The officer of the new guard claimed it because the relief marched in before the birth and the keys were delivered over to him, but the officer of the old guard claimed it because the sentries had not been changed at the time the child was born. His men were still on their beats, and he disputed the circumstance about the keys, arguing that in all probability their delivery to the officer of the new guard had not taken place at the moment of the birth. Although there was no precedent, the old guard got it.